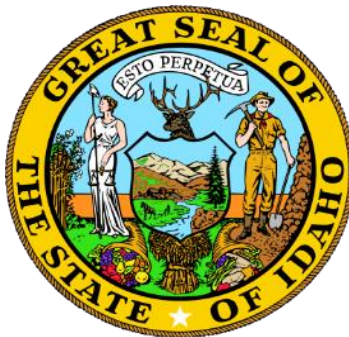




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**IN THE OFFICE OF THE ATTORNEY GENERAL
STATE OF IDAHO**

**ATTORNEY GENERAL LAWRENCE G.
WASDEN'S REVIEW OF:**

**ST. JOSEPH REGIONAL MEDICAL
CENTER, INC.'S PROPOSED SALE OF
CHARITABLE TRUST ASSETS TO ST.
JOSEPH HOSPITAL, LLC, a Delaware
limited liability company.**

FILE NO. 7866-218135

ATTORNEY GENERAL'S OPINION

March 20, 2017

TABLE OF CONTENTS

I.	Introduction	1
II.	Procedural History	2
	A. Independent Business Valuation	2
	B. Informational Webpage	2
	C. Public Comments and Meeting	2
	D. Document and Information Requests	3
	E. 60-Day Extension to Original Deadline	3
III.	Findings of Fact	3
	A. Parties to the Proposed Sale	3
	1. St. Joseph Regional Medical Center, Inc. (SJPMC)	3
	a. Establishment, Expansion, and Charitable History	3
	b. Operations and Current Service Area	6
	c. SJPMC's Charity Care	7
	2. RCCH HealthCare Partners and St. Joseph Hospital	7
	B. The Due Diligence Process	7
	C. Terms of the Proposed Sale	8
	D. Proposed Retention and Distribution of the Net Proceeds	9
	1. Original Proposal	9
	2. Negotiated Agreement with Ascension Health	10
	3. Negotiated Agreement with RCCH HealthCare Partners	11
	E. Public Comments Regarding the Proposed Sale and the \$20 Million Endowment ...	11
	1. Written Comments Submitted to the Attorney General	11
	a. Written Comments about the Proposed Sale	12
	b. Written Comments about the Proposed \$20 Million Endowment	13
	2. Statements from Public Meeting Attendees	14
	F. Fair Market Value Analysis	14
IV.	Conclusions of Law	15
	A. Introduction	15
	B. The Attorney General Does Not Oppose the Sale of the Hospital from SJPMC to St. Joseph Hospital under the Terms of the Asset Purchase Agreement or the Agreement Between the Attorney General and Ascension Health	15
	1. SJPMC Will Receive Fair Market Value for Its Charitable Trust Assets	16
	2. The Parties' Actions Have Not Impaired the Fair Market Value of SJPMC's Charitable Trust Assets	16
	3. SJPMC's Proposed Use of the Sale Proceeds is Consistent with the Trust under Which SJPMC Holds its Charitable Trust Assets	17

a.	SJPMC's Historically Expansive Mission and Charitable Purposes, as Defined in Its Governing Documents, Support SJPMC's Proposed Use of the Sale Proceeds.....	17
b.	SJPMC's Historically Broad Service Area Supports SJPMC's Proposed Use of the Sale Proceeds.....	18
c.	The Catholic Church's Historical Commitment to Establishing the Hospital and to Serving the Community Supports SJPMC's Proposed Use of the Sale Proceeds.....	19
d.	Ascension Health and the Attorney General's Agreement Complies with Idaho Code § 48-1506(3) Because it Reflects SJPMC's and the Public's Historical Contributions to the Hospital.....	20
4.	The SJPMC Board Exercised Due Diligence Concerning the Proposed Sale of the Hospital and in Negotiating the Terms of the Asset Purchase Agreement.....	20
5.	No Person Identified in the Idaho Code § 48-1511 Will Receive an Improper Private Inurement from the Proposed Sale of SJPMC's Charitable Trust Assets	21
6.	The Terms of the Management or Services Contracts Negotiated in Conjunction with the Asset Purchase Agreement are Reasonable	21
7.	The Attorney General Does Not Oppose the Sale of the Hospital to St. Joseph Hospital Because the Terms of the Proposed Sale and the Parties' Actions Comply with Idaho Code § 45-1506	21
C.	A Change in Management of the Hospital is in the Hospital's and the Community's Best Interests.....	21
V.	Conclusion.....	23
	Appendix.....	24

APPENDIX

The Idaho Nonprofit Hospital Sale or Conversion Act, title 48, chapter 14, Idaho Code

I.

INTRODUCTION

St. Joseph Regional Medical Center (“the Hospital” or “SJRMC Hospital”) has served as the Lewis-Clark Valley’s primary hospital for over 100 years. Established in Lewiston in 1902, the Hospital has expanded from a seven-room facility to the only acute care hospital¹ between Boise and Spokane. The Hospital provides award-winning, accredited care to thousands of residents in Idaho, Washington, and Oregon. As a charitable institution, the Hospital never turns away a patient because he or she cannot afford care.

The Idaho nonprofit corporation that owns and operates the Hospital—St. Joseph Regional Medical Center, Inc., (SJRMC)—seeks to sell the Hospital to St. Joseph Hospital, LLC, (“St. Joseph Hospital”), a Delaware limited liability company and subsidiary of Tennessee-based RCCH HealthCare Partners. St. Joseph Hospital agrees to purchase the Hospital from SJRMC for approximately \$109 million, and SJRMC expects to net approximately \$75 million in post-sale proceeds.

SJRMC agrees to transfer \$23 million of the \$75 million in net proceeds into a healthcare endowment that an Idaho healthcare foundation will administer for the benefit of persons living within the Hospital’s service area. SJRMC will retain the remaining net proceeds and use them to further its charitable purposes. Additionally, as a gesture of goodwill to the Lewis-Clark Valley community, RCCH HealthCare Partners agrees to donate \$2 million and certain real property to the endowment, bringing the fund’s total principal balance to \$25 million.

The Idaho Nonprofit Hospital Sale or Conversion Act (“Nonprofit Hospital Sale Act”) requires a nonprofit hospital in Idaho to notify the Attorney General’s Office (“Attorney General”) in writing if the nonprofit hospital decides to sell or convert to a for-profit entity. The Attorney General reviews the proposed conversion to ensure its terms comply with certain factors outlined in the Nonprofit Hospital Sale Act. The Attorney General may oppose the proposed conversion and file a court action to stop it or object to parts of the transaction under other Idaho laws.

In this case, the Attorney General has (a) reviewed thousands of documents related to the proposed sale, (b) read all public comments and the transcript from the December 12th public meeting, (c) considered all relevant facts as presented, and (d) applied all applicable laws. Based on his review, the Attorney General does not oppose the sale of SJRMC Hospital to St. Joseph Hospital and encourages SJRMC and St. Joseph Hospital, without further delay, to proceed with the asset purchase as outlined in the parties’ September 16, 2016, agreement.

This opinion, which is required under the Nonprofit Hospital Sale Act, is divided into four sections. Section II summarizes the Attorney General’s review process. Section III outlines the Attorney General’s factual findings. Section IV applies the law to the facts and explains why the Attorney General does not oppose the proposed transaction.

¹ Generally, an “acute care hospital” provides inpatient medical care and other related services for surgery, acute medical conditions, or injuries. Acute care hospitals that contract with Medicare agree to accept predetermined rates for each discharge under the inpatient prospective payment system as payment in full.

II.

PROCEDURAL HISTORY

On October 20, 2016, the Attorney General received a letter from Ascension Health, the sole member of SJRMC, describing SJRMC's intent to sell its Hospital to St. Joseph Hospital.² The letter provides basic information about the proposed transaction and explains SJRMC's compliance with Section 48-1506 of the Nonprofit Hospital Sale Act. The Attorney General acknowledged in writing his receipt of the letter and served SJRMC with the Attorney General's First Requests for Information and Documents.³

A. Independent Business Valuation

One factor the Attorney General must review under the Nonprofit Hospital Sale Act requires an assessment of the Hospital's fair market value.⁴ To help the Attorney General better evaluate the Hospital's fair market value, he retained Navigant Capital Advisors ("Navigant") to prepare an independent business valuation. Navigant provided its final report to the Attorney General in February 2017.⁵

B. Informational Webpage

The Attorney General established a dedicated webpage⁶ regarding the proposed sale to help keep the public informed about the review process. The webpage went live on November 7, 2016. It includes non-confidential documents related to the proposed sale, comments from the public, and a link to the Nonprofit Hospital Sale Act.

C. Public Comments and Meeting

Forty-two people provided written comments to the Attorney General regarding the proposed sale. The Attorney General also held a public meeting in Lewiston on December 12, 2016, for the community to express their opinions about the proposed sale. At the meeting, 17 individuals spoke about (a) SJRMC's and the community's healthcare needs, (b) current management problems at the Hospital, (c) concerns with the purchase price, (d) SJRMC's intent to retain the net proceeds, or (e) their support of the proposed transaction.⁷

² Letter from Joseph R. Impicicche, Ascension Executive Vice-President & General Counsel ("EVP Impicicche"), to Lawrence Wasden, Attorney General (Oct. 20, 2016).

³ Letter from Stephanie Guyon, deputy attorney general, to EVP Impicicche (Oct. 21, 2016) (includes attachment).

⁴ See IDAHO CODE § 48-1506(1).

⁵ Appraisal and Business Valuation of St. Joseph Regional Medical Center, Inc., Navigant, Inc. (Feb. 16, 2016) ("Appraisal"). SJRMC filed an action against the Attorney General in Ada County District Court to maintain the confidentiality of several documents produced in this matter. The Appraisal is subject to that action and is presently unavailable to the public.

⁶ The webpage is available at www.ag.idaho.gov/consumerProtection/sjrmc/sjrmcMain.html.

⁷ Idaho Code § 48-1505(1) allows the Attorney General to hold a public meeting in the county where the nonprofit hospital is located. SJRMC Hospital is located in Nez Perce County, Idaho. The Attorney General determined Lewiston, the county seat and location of SJRMC Hospital, was the best place for the public meeting.

D. Document and Information Requests

The Attorney General served SJRMC with three different requests for information and documents. SJRMC produced documents in response to the first requests and responded in part to the second and third requests. In total, SJRMC produced and the Attorney General reviewed over 2,500 documents.

E. 60-Day Extension to Original Deadline

The 90-day deadline for the Attorney General to provide his opinion regarding the proposed transaction was January 18, 2017. The Nonprofit Hospital Sale Act authorizes the Attorney General to apply to the district court for a 60-day extension “provided the extension is necessary to obtain necessary and relevant information” related to the proposed transaction.⁸

As of January 10, 2017, the independent business valuation and SJRMC’s responses to the third information and document requests remained pending. Additionally, the Attorney General had not had an opportunity to review SJRMC’s responses to the second information and document requests. Based on these factors, the Attorney General applied to the Nez Perce District Court to obtain a 60-day extension to the January 18, 2017, deadline. SJRMC did not oppose the request, and Judge Gaskill entered an order on January 12, 2017, extending the deadline until March 20, 2017.

III.

FINDINGS OF FACT

The factual record before the Attorney General includes (a) documents and written communication from SJRMC, (b) written comments from interested persons, (c) the public meeting transcript, (d) the independent business valuation, (e) materials the Attorney General obtained through his own research, and (e) media reports. This section summarizes the Attorney General’s findings as presented by the factual record.

A. Parties to the Proposed Sale

On September 28, 2016, SJRMC, St. Joseph Hospital, and Capella Healthcare, Inc., (“Capella Healthcare”),⁹ entered into an asset purchase agreement. The following subsections present facts known to the Attorney General regarding these three parties.

1. St. Joseph Regional Medical Center, Inc. (SJRMC)

SJRMC, an Idaho nonprofit corporation, owns and operates the Hospital located at 415 Sixth Street in Lewiston, Idaho. This subsection summarizes (a) the Hospital’s establishment at its current address and SJRMC’s corporate and charitable history, (b) the Hospital’s operations and current service area, and (c) the Hospital’s fair market value.

a. Establishment, Incorporation, and Charitable History

The Hospital’s earliest history differs depending on the source consulted. For purposes of this opinion, however, in describing the Hospital’s formation, the Attorney General relies primarily on information he received from SJRMC.

⁸ IDAHO CODE § 48-1504(2).

⁹ Tennessee-based Capella Healthcare is owned by RegionalCare Hospital Partners, Inc.

In 1902 the Sisters of St. Joseph of Lewiston established the Hospital in a seven-room house located at 325 Snake River Avenue. A year later, the Hospital moved to a facility constructed on property the Sisters received as a gift from Father Leopold Van Gorp, SJ. That property, located at 415 Sixth Avenue, is the current site of the Hospital.

The Sisters of St. Joseph of Lewiston dissolved in 1919. But before doing so, the Sisters transferred the Hospital property to the Sisters of St. Joseph of Idaho, which incorporated as an Idaho nonprofit on March 23, 1918.¹⁰ The Sisters of St. Joseph of Idaho's stated charitable purpose was to:

own, maintain, operate and conduct hospitals, convents, homes, schools and orphanages, and to further the cause of religious education; to care for and educate orphans and dependent children; care for aged, infirm and needy persons, and care for and relieve the suffering of sick or afflicted persons.¹¹

In the early 1920s, the Sisters of St. Joseph of Idaho sought financial assistance from the Lewiston community to complete the construction of a Hospital annex. The expansion was intended to increase the Hospital's patient capacity from 58 to 125 and to add operating, sterilizing, delivery, and x-ray rooms. In response to the Sisters' pleas for financial assistance, community leaders implemented the "Every Citizen a Giver" campaign and sought donations from citizens throughout the Lewis-Clark area.

Through fundraising events, generous donations, and loans, the Hospital expanded to include additional wings that accommodated more patients. By the 1940s, the Hospital included medical and surgical nursing units, a pediatrics department, an obstetrical department, and a laboratory.

The corporation changed its name in 1968 to St. Joseph's Hospital, Inc.¹² Several years later, St. Joseph's Hospital, Inc., modified its charitable purposes. Its Third Articles of Amendment granted the corporation authority to:

- own, maintain, operate and conduct hospitals and convents; to care for the aged, infirmed and needy persons and care for and relieve the suffering of sick and afflicted persons.
- provide on a non-profit basis, hospital facilities and services for the care and treatment of persons who are acutely ill and who otherwise require medical care and related services, pursuant to Section 242 of the National Housing Act, as amended.¹³

The 1960s and 1970s brought more changes to the Hospital. To finance renovations and additions to the Hospital, community leaders launched the "Capital Gift Campaign." Businesses, medical groups, and individuals donated over \$950,000 in response to the Campaign. Loans and federal matching funds paid additional construction costs.

¹⁰ Sisters of St. Joseph of Idaho, Articles of Incorporation (March 23, 1918).

¹¹ *Id.*

¹² Sisters of St. Joseph of Idaho, Articles of Amendment (June 3, 1968).

¹³ St. Joseph's Hospital, Inc., Third Articles of Amendment (April 15, 1974).

The final corporate name change came in 1987 when St. Joseph's Hospital, Inc., became SJRMC. Its Articles of Amendment read, in part:

The purpose of the Corporation is to help fulfill the mission of the Roman Catholic Church: to continue the mission of Jesus given him by his Father. We continue in this spirit and engage in works of compassion and mercy which respond to the spiritual and corporal needs of persons in our times. We do this in a way that

- heals and reconciles
- serves all persons without distinction
- makes known through our lives the gospel we proclaim
- enables others to assume a more active responsibility for building the kingdom
- recognizes and defends the human dignity of all persons
- promotes justice with a particular concern for the poor.¹⁴

Carondelet Health System, Inc., a St. Louis-based Catholic health system became SJRMC's sole member in 1993.¹⁵ SJRMC then issued Restated Articles of Incorporation, which reiterated the charitable purposes provided in SJRMC's 1987 Articles of Amendment.

In December 2002, Carondelet Health System, Inc.,¹⁶ became affiliated with Ascension Health.¹⁷ As SJRMC's sole member, Ascension Health directs SJRMC's philosophy, purpose, and management as illustrated in SJRMC's current Articles of Restatement:

... The Corporation's purpose shall be consistent with and supportive of the corporate purposes of Ascension Health. In furtherance of these purposes, the Corporation may:

2.1-1 Serve as the parent corporation for an integrated health care delivery and financing network.

2.1-2 Operate and support health care institutions and activities which are sponsored by the Sponsors,¹⁸ both within and without the State of Idaho.

2.1-3 Serve as an integral part of the Roman Catholic Church and carry out its mission in support of or in furtherance of the charitable purposes of the organization described in this Section 2.1.

2.1-4 Further the philosophy and mission of Ascension Health of healing and service to the sick and poor, and promote, support and engage in any of the religious, charitable, scientific and educational ministries which are now, or may hereafter be, established by Ascension Health, or sponsored by the Sponsors and which are in

¹⁴ SJRMC, Fifth Articles of Amendment (Feb. 26, 1987).

¹⁵ SJRMC, Restated Articles of Incorporation (Jan. 11, 1993).

¹⁶ Carondelet Health System, now known as Ascension Health Senior Care, is a Missouri nonprofit corporation and subsidiary of Ascension Health.

¹⁷ The affiliation transaction required Carondelet Health System's sponsor to join Ascension Health as Ascension Health's sixth sponsor. As consideration for the transaction, Ascension Health assumed certain financial obligations of Carondelet Health System.

¹⁸ "Sponsor" means Ascension Health Ministries, a public juridic person. *See* SJRMC, 2014 Amended and Restated Bylaws (Apr. 28, 2014).

furtherance of or in support of the charitable purposes of the organizations described in this Section 2.1.

2.1-5 Raise funds for any or all of the organizations described in this Section 2.1 from the public and from all other sources available; receive and maintain such funds and expend principal and income therefrom in support of or in furtherance of the charitable purposes of such organizations.

2.1-6 Acquire, own, use, lease as lessor or lessee, convey and otherwise deal in and with real and personal property and any interest therein, all in support of or in furtherance of the charitable purposes of organizations described in this Section 2.1.

2.1-7 Contract with other organizations (for profit and nonprofit), with individuals and with governmental agencies in support of or in furtherance of the charitable purposes of the organizations described in this Section 2.1.

2.1-8 Engage in any lawful activities within the purposes for which a corporation may be organized under the Idaho Nonprofit Corporation Act (the “Act”), as it may be amended from time to time, which are in furtherance of or in support of the charitable purposes of the organizations described in this Section 2.1.

2.1-9 Serve as the controlling entity of Subsidiary Organizations¹⁹ that conduct health related and other activities, and limit the powers, duties and responsibilities of the governing bodies of such Subsidiary Organizations, all in accordance with requirements established by Ascension Health.

2.1-10 Support institutions sponsored by the Sponsors, both within and without the State of Idaho, and cooperate with other Ascension Health institutions.

2.1-11 Promote cooperation and exchange knowledge and experience among the various apostolates of the Sponsor within the health care mission.²⁰

b. Operations and Current Service Area

Licensed for 145 beds, SJRMC today operates the largest full-service medical center in the region and provides advanced-level specialty health care. SJRMC employs over 120 board-certified physicians and providers who are active in primary care and specialty practices. The medical group includes over 50 providers representing 19 specialties, including primary and family practice, oncology, and cardiology.

The Hospital’s current service area encompasses a population of approximately 180,000 persons located in five Idaho counties, three Washington counties, and one Oregon county. On average, the counties the Hospital serves have more elderly, less insured, and lower-income populations than their respective states or the national average.

¹⁹ “Subsidiary Organizations” means any legal entity directly or indirectly controlled by SJRMC. SJRMC, 2014 Amended and Restated Bylaws (Apr. 28, 2014).

²⁰ SJRMC, Articles of Restatement (Oct. 12, 2016). The charitable purposes identified in SJRMC’s 2016 Articles of Restatement mirror those in SJRMC’s 2002 Articles of Restatement.

Critical access hospitals²¹ in the Hospital's service area provide its strongest competition, especially for surgical services. The Hospital competes primarily with three critical access hospitals located within 35 miles of the Hospital: (1) Tri-State Memorial Hospital & Medical Campus in Clarkston, (2) Pullman Regional Hospital, and (3) Gritman Medical Center in Moscow.

c. SJRMC's Charity Care

SJRMCM, as required under Section 501(r) of the Internal Revenue Code, maintains a written financial assistance policy. SJRMCM limits the amounts that eligible patients are charged for emergency or other medically necessary care. The financial assistance policy details several eligibility terms and charity programs. Generally, however, after insurance pays its portion, SJRMCM writes off 100% of the patient's portion of unpaid charges for emergency or medically necessary care for patients who have incomes of less than or equal to 250% of the Federal Poverty Level.

SJRMCM also offers discounts to insured and uninsured patients who need assistance, but who do not qualify for SJRMCM's standard financial assistance programs. In its debt collection policy, SJRMCM defines the practices its employees must follow for patients who qualify for financial assistance. Certain collection practices are inapplicable to those patients.

2. RCCH HealthCare Partners and St. Joseph Hospital

In May 2016, Capella Healthcare and RegionalCare Hospital Partners, Inc.,²² merged to create one of the largest healthcare operating companies in the United States. The combined company operates as RCCH HealthCare Partners and is located in Brentwood, Tennessee.²³

RCCH HealthCare Partners employs over 13,000 people, affiliates with 2,000 physicians and mid-level providers, and has \$1.7 billion in revenues.²⁴ As of March 2017, RCCH HealthCare Partners owned and operated 17 regional health systems in 12 states.²⁵

In 2016, RCCH HealthCare Partners created St. Joseph Hospital, a Delaware limited liability company. St. Joseph Hospital is the purchaser in the proposed sale of the Hospital.

B. The Due Diligence Process

The SJRMCM Board began an extensive evaluation of the Hospital's operations and long-term goals in FY 2013. To assist the SJRMCM Board in identifying strategic initiatives for the Hospital, the SJRMCM Board first underwent a Ministry Positioning process. Through this process the SJRMCM Board obtained a better understanding of the Hospital's current capabilities, immediate needs, and future investments.

²¹ "Critical access hospital" is a designation given to certain rural hospitals by the Centers for Medicare and Medicaid Services.

²² Formed in July 2009, RegionalCare Hospital Partners, Inc., is a privately-held Delaware corporation located in Brentwood, Tennessee.

²³ Capella Healthcare, RegionalCare Hospital Partners and Capella Healthcare Announce Completion of Merger (May 2, 2016), <http://capellahealth.com/2016/news-releases/regionalcare-hospital-partners-capella-healthcare-announce-completion-merger-3>.

²⁴ RCCH HealthCare Partners, About Us, <http://rcchhealth.com/about>.

²⁵ The 12 states in which the combined company operates hospitals are Alabama, Arizona, Arkansas, Connecticut, Iowa, Montana, Ohio, Oklahoma, Oregon, South Carolina, Texas, and Washington. RCCH Healthcare Partners, Our Communities, <http://rcchhealth.com/communities-we-serve>.

Following the Ministry Positioning Process, the SJRMC Board conducted a discernment process²⁶ to identify the affiliation type the Hospital needed to best serve the community and to strengthen the Catholic ministry. The SJRMC Board completed the discernment process in mid-2014.

Ascension Health subsequently developed a request for proposal concerning a potential business combination between SJRMC and an Ascension Health hospital in Pasco, Washington.²⁷ The selection process began with the SJRMC Board and the Washington hospital reviewing several nonbinding indications of interest. Additional reviews of the candidates' credentials and offers occurred, and, in June 2015, the SJRMC Board and the Washington hospital jointly announced they had entered into letters of intent with Capella Healthcare.

C. Terms of the Proposed Sale

SJRMC identifies the principal terms of the proposed sale in its October 20th notice letter and in its responses to the Attorney General's requests for information. Those terms are:

1. St. Joseph Hospital agrees to pay \$109 million, subject to customary adjustments for normalized working capital, to purchase substantially all of SJRMC's assets.
2. For at least five years after the sale, St. Joseph Hospital agrees to (a) continue to operate the Hospital as a general acute care hospital, (b) continue to provide general surgery, general medicine and emergency department services at the Hospital, and (c) not make any material reductions to, or changes in, the mix or level of services offered at the Hospital as of the calendar day immediately prior to the sale.
3. St. Joseph Hospital agrees to hire employees of SJRMC who are in good standing. The employees will be hired in positions and at compensation and benefit levels that are no less favorable than the positions and compensation levels the employees have immediately prior to closing.
4. For at least 10 years after the sale, the Hospital will have a local board of trustees that includes Hospital physicians and local community leaders.
5. St. Joseph Hospital agrees to implement policies concerning the care of indigent patients. The policies must generally conform to those in effect prior to closing.
6. St. Joseph Hospital agrees to provide the same amount of charity care that SJRMC provided prior to closing.
7. St. Joseph Hospital agrees to implement reasonable policies for the Hospital's community benefit programs. For at least 10 years after the sale, the policies must reasonably conform to those in effect prior to closing.
8. St. Joseph Hospital agrees to maintain the operations and privileges of the medical staff.

²⁶ A "discernment process" is a multi-step, values-based analysis of a defined problem.

²⁷ The hospital is Lourdes Health Network.

9. Within five years of the sale, St. Joseph Hospital agrees to spend (or commit to spend) at least \$57 million in the aggregate on capital expenditures at the Hospital.
10. For 10 years after the sale, St. Joseph Hospital agrees the Hospital will continue to participate in the Medicare and Medicaid programs.
11. St. Joseph Hospital agrees to use its best efforts to negotiate and enter into a definitive agreement with the local Bishop concerning St. Joseph Hospital's operation of the Hospital in a manner that conforms to the Catholic tradition.
12. For at least 10 years, St. Joseph Hospital agrees to retain the names of certain Hospital departments or wings.
13. St. Joseph Hospital may assign its right to purchase and lease the Hospital's real property to an independent third-party real estate company that would simultaneously lease and sublease, respectively, that real property to St. Joseph Hospital.

The Attorney General is unaware of any changes or substantive additions to the above terms. Further, the parties have identified in writing to the Attorney General all assets that are included or excluded from the proposed sale.

D. Proposed Retention and Distribution of the Net Proceeds

In its October 20th notice letter, SJRMC represents to the Attorney General that the net proceeds of the proposed sale will total approximately \$75 million. SJRMC also outlines in its October 20th letter how—at that point—SJRMC planned to distribute the net proceeds.

The proposal of October 20th differs from the terms contained in an Agreement recently reached between Ascension Health (acting on behalf of SJRMC) and the Attorney General. To preserve the record, however, it is important to include within the Attorney General's factual findings an outline of SJRMC's October 20th proposal. Sections D.2. and D.3., respectively, discuss the Attorney General's recently executed agreements with Ascension Health *and* RCCH HealthCare Partners.

1. Original Proposal

Originally, SJRMC proposed establishing a \$20 million healthcare endowment within the existing SJRMC Foundation. SJRMC identified the following five terms in conjunction with its proposal:

- SJRMC will continue to appoint the members of the Board of Trustees of the SJRMC Foundation but a majority of such members will be from the Lewiston community.
- The SJRMC Foundation's Board of Trustees will make the decisions with respect to which projects to fund and how distributions will be made within pre-established guidelines relating to Roman Catholic identity and values established by the Ascension Sponsor.

- No further approvals will be needed with respect to the funding of projects so long as distributions remain within the referenced guidelines.
- Distributions will be made from the annual earnings of the corpus of the SJRMC Foundation.
- The SJRMC Foundation will remain a subsidiary of Ascension Health.

As for the remaining \$55 million in net proceeds, SJRMC originally proposed it would retain the funds and use them according to its Catholic mission, charitable purposes, and governing documents.

2. *Negotiated Agreement with Ascension Health*

The Attorney General and Ascension Health worked cooperatively over the past several weeks to reach an agreement²⁸ that addresses the Attorney General's concerns about the amount and administration of the distribution and that ensures SJRMC's charitable trust assets will continue to support the Catholic Tradition. Ascension Health, on behalf of SJRMC, agrees to contribute \$23 million to a healthcare endowment administered by the Lewis-Clark Valley Healthcare Foundation ("the Foundation"), a yet-to-be-created Idaho I.R.C. § 501(c)(3) foundation. The Foundation's charitable purposes will be:

- To make grants, contributions, or program-related investments to qualified I.R.C. § 501(c)(3) exempt organizations that promote the health, wellness, or disease prevention of persons within the former service area of St. Joseph Regional Medical Center;²⁹
- To sponsor or participate in activities, programs, or projects designed to promote the health, wellness, or disease prevention of persons within the former service area of St. Joseph Regional Medical Center;
- To advocate for health policies that address the health needs, reduce the health risks or disparities, promote the health equity, or lessen the burden of illness for persons within the former service area of St. Joseph Regional Medical Center; and
- To respect the religious, ethical, and moral principles of the Roman Catholic Church and adhere to the Ethical and Religious Directives for Catholic Health Care Services when selecting the programs, projects, activities, or policies to support or promote, with all matters faith being decided by the local Catholic Bishop.

The Attorney General will help facilitate the Foundation's creation as an Idaho nonprofit corporation and tax-exempt organization and will review the Foundation's governing documents to ensure they set forth the above charitable purposes. Once the Foundation is created and it establishes the endowment, the Foundation will receive the \$23 million.

²⁸ The Agreement with Ascension Health is posted at www.ag.idaho.gov/consumerProtection/sjrmc/sjrmcMain.html.

²⁹ The hospital's former service area included Clearwater, Idaho, Latah, Lewis, and Nez Perce counties, Idaho; Wallowa County, Oregon; and Asotin, Garfield, and Whitman counties Washington.

As consideration for Ascension Health's promises under the Agreement, the Attorney General released SJRMC and Ascension Health from any liability under the Nonprofit Hospital Sale Act, as well as other applicable charitable trust laws that the Attorney General enforces.³⁰

SJRMCM will remain part of Ascension Health post-sale and it will retain the remaining \$52 million in net proceeds. SJRMCM has assured the Attorney General that it will use the funds consistent with its charitable purposes and its Catholic mission.³¹

3. Negotiated Agreement with RCCH HealthCare Partners

As a gesture of goodwill to the Hospital's community, RCCH HealthCare Partners agrees to donate \$2 million and certain real property³² to the Foundation's endowment. An agreement³³ between RCCH HealthCare Partners and the Attorney General specifies that RCCH HealthCare Partners will transfer the funds to the Foundation after the sale closes and the Foundation receives its I.R.C. § 501(c)(3) determination ruling from the IRS.

RCCH HealthCare Partners also agrees to donate certain real property to the Foundation. Because the obligations associated with a donation of real property may overwhelm a fledgling organization, the Foundation's board of trustees may vote to decline the donation.

E. Public Comments Regarding the Proposed Sale and the \$20 Million Endowment

The Attorney General solicited and began receiving written comments from the public at the end of October 2016.³⁴ Additionally, the Attorney General held a public meeting in Lewiston on December 12, 2016, where people expressed their opinions about the proposed sale.

1. Written Comments Submitted to the Attorney General

Of the 42 persons who filed written comments with the Attorney General, 40 people provided substantive opinions in their comments.³⁵ One of the remaining two persons who commented encouraged the Attorney General to review the facts before making a decision, and the other asked questions about the proposed sale.

³⁰ This includes Idaho Code §§ 67-1401(5) and 67-1401(11). Refer to section IV, part A, fn. 38, for a brief discussion of the Attorney General's authority to enforce charitable trusts.

³¹ At the December 12, 2016, public meeting, a representative of Ascension Health explained:

Consistent with [Ascension Health's] mission, we intend to use proceeds from this transaction to address the needs of those that we are privileged to serve, in communities around the nation. Whether it's through our efforts in human trafficking or our special care and service to our nation's veterans, or even our medical missions at home for those living in poverty in cities and towns across the nation, we will continue to be advocates for a compassionate and just society, through our words and deeds.

Public Meeting Transcript, p. 24, ls. 15-25 (Dec. 12, 2016).

³² The real property that RCCH HealthCare Partners agrees to donate to the Foundation is located at 608 Fifth Avenue, Lewiston, Idaho, and commonly is referred to as Carondelet House.

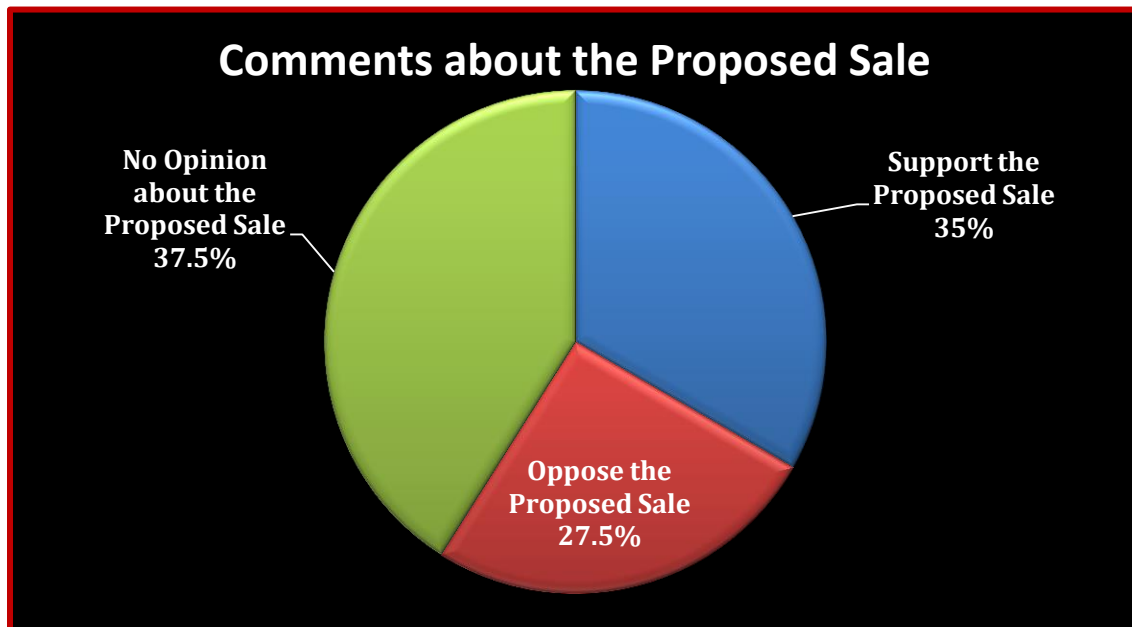
³³ The Agreement with RCCH HealthCare Partners is posted at www.ag.idaho.gov/consumerProtection/sjrmc/sjrmcMain.html.

³⁴ Most of the written comments are posted at www.ag.idaho.gov/consumerProtection/sjrmc/sjrmcMain.html. Some commenters elected not to have their comments posted.

³⁵ This number includes comments received between October 26, 2016, and March 13, 2017.

a. Written Comments about the Proposed Sale

Twenty-four persons commented about the proposed sale, with 14 expressing their support and 11 stating their opposition. Those in support of the sale cite (a) the Hospital staff's discontent with Ascension Health's management of the Hospital, (b) RCCH HealthCare Partners' pledge to improve the Hospital's services, facilities, and market competitiveness, (c) RCCH HealthCare Partners' commitment to uphold SJRMC's Catholic Tradition, continue SJRMC's current level of charity care, and invest \$57 million in capital improvements, and (d) an increase in tax revenue for Nez Perce County. The following chart illustrates the percentage of comments the Attorney General received regarding each position:



I support the sale of SJRMC. If the sale is not approved the long term viability of the hospital is at risk as proven by the actions or lack thereof by the current owners. The community needs a reliable and state of the art facility. Separation from Ascension is the most important action that needs to take place.

(edited for clarity)

Persons close to the proposed sale express an administrative and financial urgency to completing it and obtaining capital funds to immediately improve the Hospital's viability. A Washington physician explained the situation well, encouraging the Attorney General's timely approval of the proposed sale so "RCCH can come on board with [the] leadership and capital needed to revitalize [the Hospital]." A member of the Lewiston City Council emphasized "RCCH[s] guaranteed commitment to continue charity care at historic

I believe it is time for SJRMC to become affiliated with an organization that will invest capital funds back into our local hospital. RCCH has committed to spending \$57 million in capital investment over the next few years. I am confident the hospital and the community it serves will benefit greatly from this proposed investment.

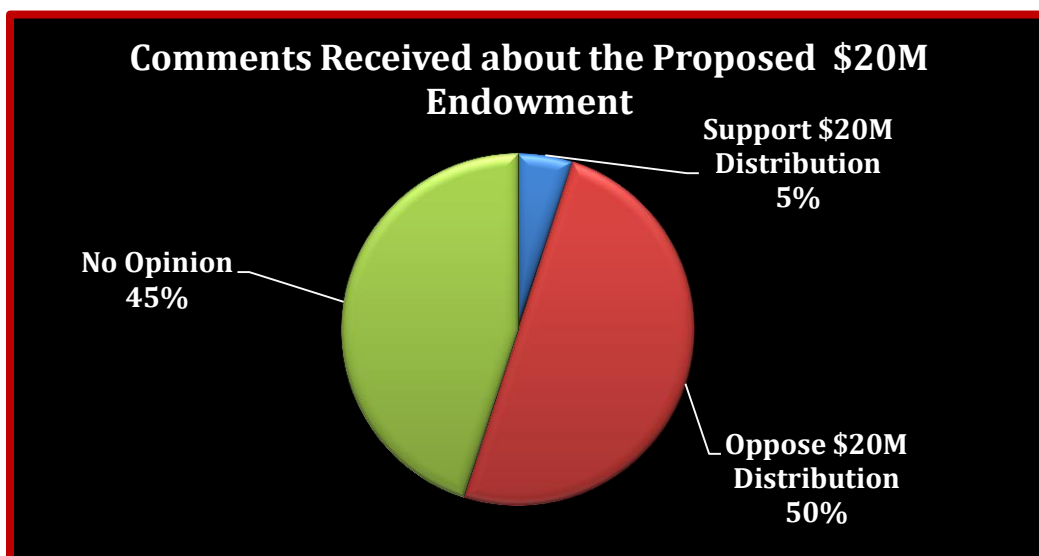
(edited for clarity)

levels while providing financial support to the hospital's community benefit program.”

Those who oppose the proposed transaction have a variety of concerns, but their main issue is with a for-profit entity owning and operating the Hospital. For example, people question whether a for-profit entity will provide the same level of charity care and health services to the community. Others are concerned that healthcare costs will increase and the quality of services will decrease under a for-profit corporation's ownership.

b. Written Comments about the Proposed \$20 Million Endowment

Twenty-two persons filed comments about SJRMC's original proposal to establish a \$20 million endowment within the SJRMC Foundation. The following chart shows the percentage breakdown of the comments filed in opposition or support of the proposal:



Throughout the generations, we have chosen to support SJRMC at auctions, events, and through patronage as patients. We did this because SJRMC was part of the fabric of our community. I didn't ever expect, or intend, that the dollars I gave or paid to SJRMC would ever leave the region.

Twenty of the 22 persons who filed comments about the proposed \$20 million endowment voice opposition to SJRMC retaining some or all of the net proceeds of the sale. Referencing the community's lengthy history of financial support for the Hospital, people feel the net profits should remain in the Lewis-Clark Valley and continue to benefit the health needs of the community. Several long-time residents of the area and employees of SJRMC believe that losing any of the funds to SJRMC constitutes a loss of the community's investment in the Hospital. Additionally, some people have concerns about Ascension Health having any continuing control over an endowment fund.

Two Lewiston residents provided comments in support of the endowment fund. One person writes, “\$20 million is significant to a community of our size. This foundation will provide substantial benefits and increased accessibility and opportunity to make Lewiston and the surrounding area a better, healthier and happier place to live.”

2. Statements from Public Meeting Attendees

At the public meeting on December 12, 2016, 17 people made statements to an audience of over 100 attendees.³⁶ Held at Lewis-Clark College in Lewiston, the meeting began at 5:30 p.m. and ended at 6:50 p.m.

Meeting attendees included members of the public, employees of SJRMC, and executive management of Ascension Health and RCCH HealthCare Partners. None of the speakers voiced resolute opposition to SJRMC’s proposal to sell the Hospital to St. Joseph Hospital and, in fact, more than half of the speakers encouraged a prompt transition to new management. Two physicians who spoke at the meeting provided insight about the current problems facing the Hospital:

[The Hospital] already [is] having trouble attracting physicians. I can guarantee you will have trouble retaining physicians if something is not done. Why am I practicing in a building that was built in 1947 that we’ve not been able to have replaced by Ascension. I want to be able to continue to practice medicine and provide good-quality care. The morale of the physicians with the present employer is terrible. (edited for clarity)

The team that looked at the different options and met the RCCH people like and trust them. They feel RCCH will spend a lot of money to put up a nice building not just for primary care but for maybe a surgery center and for things that will make care move into the next century. (edited for clarity)

Speakers did not support, however, SJRMC’s proposal to retain the net proceeds from the sale or to establish an endowment that SJRMC or Ascension Health continues to operate. People expressed a preference for all of the net proceeds to remain within the Lewis-Clark Valley and within a foundation that neither SJRMC nor Ascension Health controls. People emphasized that, for almost 100 years, the community has donated its time, talents, and money to sustain and expand the Hospital, and SJRMC has received substantial financial benefits through tax exemptions.

F. Fair Market Value Analysis

The Attorney General retained an independent business valuation company—Navigant—to analyze SJRMC’s finances, assess the Hospital’s operations, and calculate the fair market value of SJRMC. Among multiple other tasks, Navigant reviewed thousands of records, researched national, regional, and local healthcare trends, toured the Hospital, its facilities, and properties, observed and evaluated the Hospital’s operations and staff, and spoke in-person with Hospital management.

Navigant relied primarily on the Discounted Cash Flow Method to estimate SJRMC’s fair market value, and it corroborated its estimate with value indications from two market-based valuation methods—the Guideline Company Method and the Similar Transaction Method. Based on Navigant’s review, research, analysis, and judgment, as of December 1, 2016, the fair market value of SJRMC as a going

³⁶ The transcript for the public meeting is available at www.ag.idaho.gov/consumer/sjrmc_sale.html.

concern was [REDACTED].³⁷ This figure includes a net working capital adjustment that Navigant calculated based on SJRMC's working capital balance as of December 1, 2016. That amount will differ at closing and will affect SJRMC's estimated fair market value. The Hospital's fair market value is less than the purchase price.

IV.

CONCLUSIONS OF LAW

A. Introduction

In most instances, the proposed sale or conversion of a nonprofit hospital to a for-profit entity requires the Attorney General's review to determine if, under the Nonprofit Hospital Sale Act,³⁸ a proposed sale "is in the charitable trust interest."³⁹ Section IV of this opinion first outlines the six factors in the Nonprofit Hospital Sale Act that are applicable to the Attorney General's review. Next the Attorney General applies each factor to the relevant facts. Finally, the Attorney General discusses why the proposed sale is in the best interests of the Hospital and the people it serves.

B. The Attorney General Does Not Oppose the Sale of the Hospital from SJRMC to St. Joseph Hospital under the Terms of the Asset Purchase Agreement or the Agreement Between the Attorney General and Ascension Health

The Nonprofit Hospital Sale Act requires the Attorney General to consider six factors during his review of a proposed sale or conversion of a nonprofit hospital's assets to a for-profit entity. The six factors are delineated in Idaho Code § 48-1506 and read:

- (1) Whether the nonprofit hospital will receive fair market value for its charitable trust assets;
- (2) Whether the fair market value of the nonprofit hospital's assets to be transferred has been affected by the actions of the parties in a manner that improperly causes the fair market value of the assets to decrease;

³⁷ The appraisal, its contents, and the data on which the appraisal is based are the subjects of a pending public records lawsuit that SJRMC filed against the Attorney General's Office in Ada County District Court. SJRMC is seeking a protective order and alleges the appraisal and related documents are confidential or otherwise exempt from disclosure to the public under Idaho Code § 48-1509 and the Idaho Public Records Act, title 74, chapter 1, Idaho Code.

³⁸ The Nonprofit Hospital Sale Act is not the only law under which the Attorney General may review a proposed transaction. Because a nonprofit hospital sale or conversion implicates the transfer of charitable trust assets to a for-profit entity, the Attorney General may review the facts and circumstances of a proposed sale under other charitable trust laws he enforces. For example, the Attorney General has a duty under Idaho Code § 67-1401(5) to oversee and protect charitable trust assets held by persons, corporations, or other entities. *See, e.g., In re Eggan's Estate*, 86 Idaho 328, 386 P.2d 563 (1963); *Yribar v. Fitzpatrick*, 91 Idaho 105, 416 P.2d 164 (1966); *Dolan v. Johnson*, 95 Idaho 385, 509 P.2d 1306 (1973). *See also Wasden v. State Board of Land Comm'rs*, 153 Idaho 190, 195, 280 P.3d 693, 698 (2012) (citing Idaho Code § 67-1401(5) for the Attorney General's authority to preserve and protect, on behalf of the people, Idaho's endowment lands). Idaho Code § 67-1401(5) empowers the Attorney General to file legal actions on behalf of the State when he has a reason to believe that a person or organization has misused or misappropriated charitable trust assets. In addition to his statutory authority, the Attorney General has common law authority under the charitable trust doctrine to enforce charitable trusts on behalf of the public. *See* IDAHO CODE § 67-1401(11). *See also Wasden v. State Board of Land Comm'rs*, 153 Idaho at 195, 280 P.3d at 698 (emphasizing that the Attorney General, under Idaho Code § 67-1401(11), has a broad mandate to exercise all the common law power and authority usually appertaining to his office).

³⁹ IDAHO CODE § 48-1204(2).

- (3) Whether the proceeds of the proposed nonprofit hospital conversion transaction will be used consistent with the trust under which the assets are held by the nonprofit hospital and whether the proceeds will be controlled as funds independently of the acquiring or related entities;
- (4) Whether the governing body of the nonprofit hospital exercised due diligence in deciding to dispose of the nonprofit hospital's assets, selecting the acquiring entity, and negotiating the terms and conditions of the disposition;
- (5) Whether the nonprofit hospital conversion transaction will result in improper private inurement to any person as set forth in section 48-1511, Idaho Code; and
- (6) Whether the terms of any management or services contract negotiated in conjunction with the proposed nonprofit hospital conversion transaction are reasonable.

No one factor of Idaho Code § 48-1506 is more determinative than another. The six factors are applied and weighed equally. Also, the Nonprofit Hospital Sale Act does not require the Attorney General to (a) “approve” or “oppose” a proposed transaction, or (b) “approve” or “oppose” a proposed transaction only if it meets or fails to meet *all* of the factors. Pursuant to his enforcement responsibility under the Nonprofit Hospital Sale Act, the Attorney General considers each factor independently of the others and, based on the facts known to him, decides with which factors a proposed transaction has complied.

In this case, the terms of the proposed sale—as outlined in (a) the Asset Purchase Agreement and (b) the Agreement between Ascension Health and the Attorney General—comply with all six factors. Furthermore, the actions of SJRMC and St. Joseph Hospital in negotiating the proposed sale comply with Idaho Code § 48-1506.

1. SJRCM Will Receive Fair Market Value for Its Charitable Trust Assets

The first factor the Attorney General must consider in this matter is whether \$109 million—the amount that St. Joseph Hospital agrees to pay to SJRMC for the Hospital—equals or exceeds the fair market value of the Hospital (i.e., the “charitable trust assets”). To make this determination, the Attorney General retained Navigant, an independent and experienced business valuation company.

As of December 1, 2016, the estimated fair market value of SJRMC's personal and real property is less than the purchase price. The Attorney General therefore finds that SJRMC will receive fair market value for its charitable trust assets.

2. The Parties' Actions Have Not Impaired the Fair Market Value of SJRMC's Charitable Trust Assets

The Attorney General must consider under Section 48-1506(2) whether the parties associated with the proposed sale have acted in a manner that has impaired the value of the charitable trust assets. The record contains no facts to suggest that SJRMC, St. Joseph Hospital, or their affiliates have acted individually or conspired together to decrease the fair market value of SJRMC's charitable trust assets.

3. *SJRCM's Proposed Use of the Sale Proceeds is Consistent with the Trust under Which SJRCM Holds its Charitable Trust Assets*

SJRCM expects to net \$75 million in proceeds from the sale, and, under the terms of the Agreement between Ascension Health and the Attorney General, Ascension Health, on behalf of SJRCM, will contribute \$23 million to a healthcare endowment that a community healthcare foundation will administer. SJRCM will use the remaining \$52 million in net proceeds consistent with its charitable mission.

Idaho Code § 48-1506(3) requires the Attorney General to review two issues related to the proceeds of the proposed sale of the Hospital to St. Joseph Hospital: (1) how the proceeds will be used, and (2) who will control the proceeds. The first issue requires the sale proceeds to “be used consistent with the trust under which the assets are held by the nonprofit hospital.” The second issue prohibits the for-profit buyer from controlling the sale proceeds.

As for the second issue, nothing in the record indicates St. Joseph Hospital or its affiliates, including Capella Healthcare, will control the sale proceeds. The first issue, however, requires more analysis.

a. SJRCM's Historically Expansive Mission and Charitable Purposes, as Defined in Its Governing Documents, Support SJRCM's Proposed Use of the Sale Proceeds

The anticipated \$75 million in net proceeds constitute charitable trust assets of SJRCM and are dedicated to furthering its charitable purposes as defined in SJRCM's governing documents.⁴⁰ Since it first became a nonprofit corporation in 1918, SJRCM's charitable mission has included much more than healthcare. The Sisters of St. Joseph of Idaho expressed in its articles of incorporation a desire to fulfill multiple charitable purposes, including (a) operating schools and orphanages, (b) providing religious education, and (c) caring for the aged and infirm.

SJRCM's varied purposes did not change until it began focusing more on healthcare in 1974. But throughout its history, SJRCM never lost sight of its commitment to the Roman Catholic Church, and, in 1987, SJRCM articulated in its Fifth Articles of Amendment:

The purpose of this Corporation is to help fulfill the mission of the Roman Catholic Church: to continue the mission of Jesus given him by his Father. We continue this spirit and engage in works of compassion and mercy which respond to the spiritual and corporal needs of persons in our times.

Ascension Health has directed SJRCM's mission since 2002, and SJRCM, pursuant to its governing documents, has focused on supporting the programs of Ascension Health Ministries—SJRCM's Sponsor. And these programs reach far beyond healthcare services in Idaho. For example, Ascension Health, through its ministries, fights human trafficking, helps poor and vulnerable populations in developing countries, provides programs and services to meet the physical, mental, and spiritual needs of older adults, and sponsors medical missions.

The Attorney General recognizes, however, that the Idaho Legislature, regardless of how an Idaho nonprofit hospital defines its charitable mission, has determined that all nonprofit hospitals, including

⁴⁰ See IDAHO CODE § 45-1501

SJPMC, share a single charitable purpose—to *provide free or low-cost health care to Idahoans*. Indeed, SJPMC rearticulates this principle on its website, stating:

SJPMC is a Catholic hospital. Its primary purpose is to continue Christ’s mission of mercy by *meeting the health care needs of individuals and the community*. . . . Proper and competent means shall be taken to prevent and cure illness and alleviate suffering in the whole person *without regard to race, creed, national origin, economic status or ability to pay*.⁴¹

In deciding whether SJPMC’s proposed use of the net proceeds complies with Idaho Code § 48-1506(3), the Attorney General must weigh the historical significance of SJPMC’s broadly defined charitable purpose against the statutorily-defined charitable purpose shared by all nonprofit hospitals. Also, the established legal principle is that a nonprofit corporation defines its charitable purposes in its *articles of incorporation* (or similar document).⁴²

The articles of incorporation is the document on which the public and regulators rely to determine a nonprofit corporation’s purpose. Accordingly, the Attorney General has no reason to search through other publications or resources for words or phrases that may contradict or limit the broad charitable purposes set forth in SJPMC’s articles.

b. SJPMC’s Historically Broad Service Area Supports SJPMC’s Proposed Use of the Sale Proceeds

Another factor in the Attorney General’s analysis, is that SJPMC has never specified in its governing documents that its charitable activities are limited to the Hospital’s nine-county service area. It was not until 2002 that SJPMC even referenced “Idaho” in its governing documents, stating:

The Corporation’s purposes shall be consistent with and supportive of the corporate purposes of Ascension Health. In furtherance of these purposes, the Corporation may:
. . . .

2.1-b Operate and support health care institutions and activities which are sponsored by the Sponsors,⁴³ *both within and without the State of Idaho*.
. . . .

2.1-j Support institutions sponsored by the Sponsors, *both within and without the State of Idaho*, and cooperate with other Ascension Health institutions.⁴⁴

The Attorney General identified only two other instances where SJPMC refers to the Hospital’s service area. Both appear on SJPMC’s website. The first statement emphasizes that SJPMC “seeks to enhance the quality of life of *the residents of its service area* through the promotion of health, the prevention of disease and injury, and the provision of health services.”⁴⁵ The second statement reads: “SJPMC is a

⁴¹ SJPMC, About Us, <https://www.sjpmc.org/mission-philosophy/> (emphasis added).

⁴² See IDAHO CODE § 48-1401(1).

⁴³ “Sponsor” means Ascension Health Ministries, a public juridic person. See SJPMC, 2014 Amended and Restated Bylaws (Apr. 28, 2014).

⁴⁴ SJPMC, Articles of Restatement (Nov. 27, 2002) (emphasis added). SJPMC’s 2016 Restated Articles includes the same broad geographical reference.

⁴⁵ SJPMC, About Us, <https://www.sjpmc.org/mission-philosophy/> (emphasis added).

Catholic hospital. Its primary purpose is to continue Christ's mission or mercy by meeting the health care needs of *individuals and the community*.⁴⁶

But the language of SJRMC's articles of incorporation must prevail, and, historically, SJRMC has not limited its service area to only Idaho. SJRMC may reasonably expect, therefore, to use the net proceeds for charitable purposes in a continued manner.

c. The Catholic Church's Historical Commitment to Establishing the Hospital and to Serving the Community Supports SJRMC's Proposed Use of the Sale Proceeds

The final element that the Attorney General considered in deciding whether SJRMC's proposed use of the sale proceeds complies with Idaho Code § 48-1506(3) is the Catholic Church's historical commitment to establishing and expanding the Hospital, caring for the Hospital's patients, and improving the lives of persons within the Lewis-Clark Valley. In 1902 the Sisters of St. Joseph of Lewiston ventured to Lewiston, Idaho, and opened the area's first hospital. They did this at the Church's direction, not the public's. And without regard to a person's financial status, race, or religion, the Sisters treated the community's sick.

Through the years, the Sisters dedicated themselves to improving the quality and availability of healthcare within the Lewis-Clark Valley. They honed their nursing skills and established a school to educate new nurses. Through fundraisers and loans, the Sisters helped finance Hospital expansions, which added beds and specialty care departments. Simply put, the Hospital may not exist today if the Sisters had not come to Lewiston a century ago.⁴⁷

Of equal importance in the Attorney General's analysis, however, is that SJRMC has benefitted for almost 100 years from the generosity of the people in the Lewis-Clark Valley. They have given their money, their time, and their labor to establishing, expanding, improving, and sustaining the Hospital. To them, the Hospital is not just property to be bought, sold, or profited from. Generations of residents are connected to the Hospital and have expressed strong opinions about the net proceeds remaining within the community. Additionally, as an I.R.C. § 501(c)(3) organization, SJRMC has received millions of dollars in property tax exemptions from Nez Perce County.

The Catholic Church's commitment to the Hospital and to improving the lives of those within the Lewis-Clark Valley is commendable. Equally admirable are the public's fundraising efforts and hard work. To be sure, the construction and operation of the Hospital through the years has been a cooperative effort, and the Agreement between Ascension Health and the Attorney General builds upon this relationship.

⁴⁶ *Id.* (emphasis added).

⁴⁷ As one legal scholar commented in 1997:

[Catholic healthcare systems] are ministries of the Church. [They were] started through the Church, with significant financial and sweat-equity contributions made. The legitimacy of the Church in using the institution to further its larger ministry needs seems apparent. . . . Communities should understand that Catholic health providers are entwined with the Church and charged with growing and preserving both high-quality health care and a strong Catholic identity. . . . Correspondingly, judicial, regulatory, and legislative bodies should be aware of the applicable Church laws and ministry directions, which have a tremendous impact on Catholic health care.

LAWRENCE E. SINGER, *Realigning Catholic Health Care: Bridging Legal and Church Control in a Consolidating Market*, 72 TUL. L. REV. 159, 194-95; 228-29 (1997).

d. Ascension Health and the Attorney General's Agreement Complies with Idaho Code § 48-1506(3) Because it Reflects SJRMC's and the Public's Historical Contributions to the Hospital

As set forth in the Agreement, Ascension Health, on behalf of SJRMC, agrees to contribute \$23 million of the \$75 million in sale proceeds to establish an endowment within an independent healthcare foundation. The charitable purpose of the endowment will be to benefit the healthcare needs of persons in five Idaho counties, three Washington counties, and one Oregon county.

Persons who contacted the Attorney General expressed concern about Ascension Health retaining control of the proceeds if the funds went into the established SJRMC Foundation. Under the Agreement, however, the new foundation's board of trustees will have full discretion, within the limits of the foundation's charitable purposes, to select which organizations, programs, and projects to fund or support. Neither SJRMC nor Ascension Health will participate in or control any aspect of the new foundation.⁴⁸

Other people were dismayed with the amount of net proceeds SJRMC would retain post-sale. SJRMC will net approximately \$52 million from the sale. These funds, however, remain charitable trust assets, and SJRMC must use them to further its charitable purposes. By reviewing SJRMC's future publically-available IRS 990 filings, the community can monitor how SJRMC uses its charitable trust assets in the future.

The foundation and the supporting endowment are fair compromises between Ascension Health and the Attorney General because they reflect (a) the public's contribution—in relationship to the Church's historical commitment—to the Hospital, and (b) the community's desire and need to provide quality healthcare programs to the community. The Attorney General therefore finds that SJRMC's proposed use of the net proceeds, as provided in the Agreement, is consistent with the charitable trust under which SJRMC has held its charitable trust assets.

4. The SJRMC Board Exercised Due Diligence Concerning the Proposed Sale of the Hospital and in Negotiating the Terms of the Asset Purchase Agreement

Section 48-1506(4) requires a review of the SJRMC Board's due diligence process in its selection of the purchaser. The information and documents provided to the Attorney General indicate that the SJRMC Board undertook a substantive, multi-step proposal process to identify potential buyers of the Hospital.

That is not to say, however, that the Attorney General approves the SJRMC Board's acceptance of purchase proposals from entities only if they also agreed to purchase Lourdes Health Network—an Ascension Health-owned nonprofit healthcare facility in Washington. Indeed, tying the Hospital to a lesser valued, out-of-state facility may not to serve the Hospital's best interests.

However, the Attorney General cannot say that the SJRMC Board's acceptance of Capella Healthcare's purchase offer was unreasonable. First, the \$109 million purchase price exceeds the Hospital's fair

⁴⁸ The Agreement between Ascension Health and the Attorney General specifies, however, that the foundation (a) respect the religious, ethical, and moral principles of the Roman Catholic Church in all projects that the foundation funds or supports, and (b) adhere to the Religious Directives for Catholic Health Care Services when selecting the programs, projects, activities, or policies to support or promote. All matters of faith must be decided by the local Catholic Bishop.

market value. Second, Capella Healthcare agreed in its purchase offer to fund the construction of the outpatient surgery center, a vital factor in growing the Hospital and ensuring its competitiveness. Third, Capella Healthcare agreed to retain all eligible employees at their current salaries and benefits, continue SJRMC's level of charity care, and continue SJRMC's Catholic tradition. The Attorney General therefore finds that the SJRMC Board exercised adequate due diligence in identifying a purchaser and negotiating the Asset Purchase Agreement.

5. No Person Identified in Idaho Code § 48-1511 Will Receive an Improper Private Inurement from the Proposed Sale of SJRMC's Charitable Trust Assets

Idaho Code § 48-1506(5) is based on an understanding that corporate fiduciaries⁴⁹ may not unjustly enrich themselves at the expense of the organization. As the IRS explains:

No part of the net earnings of a section 501(c)(3) organization may inure to the benefit of any private shareholder or individual. A private shareholder or individual is a person having a personal and private interest in the activities of the organization.⁵⁰

Nothing in the documentary materials produced to the Attorney General indicate that an officer, director, board member, trustee, or other fiduciary of SJRMC, Ascension Health, or RCCH HealthCare Partners—including any person having a personal or private interest in SJRMC—has received or will receive an improper private inurement from the proposed transaction.

6. The Terms of the Management or Services Contracts Negotiated in Conjunction with the Asset Purchase Agreement are Reasonable

Idaho Code § 48-1506(6) concerns the reasonableness of any negotiated management contracts. Neither the Attorney General's nor Navigant's review of any such contracts revealed areas of concern.

7. The Attorney General Does Not Oppose the Sale of the Hospital to St. Joseph Hospital Because the Terms of the Proposed Sale and the Parties' Actions Comply with Idaho Code § 45-1506

The terms of the proposed sale, the parties' activities in negotiating the sale, and the disposition of the net proceeds as set forth in the Agreement between Ascension Health and the Attorney General comply with Idaho Code § 48-1506. The Attorney General therefore does not oppose the sale of the Hospital to St. Joseph Hospital under the Nonprofit Hospital Sale Act and urges the parties to the Asset Purchase Agreement to work diligently toward closing the transaction.

C. A Change in Management of the Hospital is in the Hospital's and the Community's Best Interests

The Attorney General has a second reason for not opposing the proposed sale, and this reason is best expressed by the Hospital's doctors, nurses, and other staff, the community and state leaders, and the people the Hospital serves. Multiple individuals took time to write to the Attorney General, attend the public meeting, meet with the Attorney General's staff, and to telephone his office to express support

⁴⁹ Idaho Code § 48-1506(5) applies to those persons identified in Idaho Code § 48-1511—an officer, director, board member, or other fiduciary of a nonprofit hospital.

⁵⁰ IRS, Inurement/Private Benefit-Charitable Organizations, <https://www.irs.gov/charities-non-profits/charitable-organizations/inurement-private-benefit-charitable-organizations>.

for the Hospital's sale to RCCH HealthCare Partners. For example, people remarked in writing and at the public meeting:

- RCCH HealthCare Partners is best positioned to ensure the Hospital's future success. The transition from Ascension Health to RCCH HealthCare Partners has been difficult and to disrupt the transaction at this point would hurt the Hospital's mission and progress, the employees, and the community.
- The sale to RCCH HealthCare Partners will help the community create an environment that facilitates the arrival of top notch doctors to Lewiston. These doctors will bring cutting-edge technology that will help save lives and further medical innovation. The sale will also establish Lewiston as a regional medical center that will ultimately help the local economy. These services will be essential for the health and growth of our community.
- RCCH HealthCare Partners has committed to spending \$57 million dollars in capital investment over the next few years. The Hospital and the community it serves will benefit greatly from this proposed investment.
- Transitioning to RCCH HealthCare Partners will allow the Hospital to improve and expand its facilities. Local community control of the Hospital, which RCCH HealthCare Partners is offering, will be better.
- Selling the Hospital to RCCH HealthCare Partners will help Lewiston's citizens live healthy lives with the highest quality of healthcare moving forward.
- The sale of the Hospital to RCCH HealthCare Partners will be good for the community. It is extremely important that RCCH HealthCare Partners has committed to continue providing charity care to the Hospital's service area.
- Ascension Health operates only two hospitals in the Northwest—SJRM Hospital and Our Lady of Lourdes in Pasco, Washington. RCCH HealthCare Partners, on the other hand, presently has three facilities in the Northwest. Acquiring SJRM Hospital will give RCCH HealthCare Partners a presence in four Northwestern states—Idaho, Montana, Oregon, and Washington.
- RCCH HealthCare Partners' purchase of the Hospital will significantly benefit the community. Lewiston will be able to generate added tax revenue, which can go towards other community needs like building of the new schools, parks, roads, and other public services. Additionally, RCCH HealthCare Partners will enter into a "Catholic Tradition Agreement" with the local bishop and will continue charity care at historic levels while providing financial support to the Hospitals' community benefit program.

The Attorney General also acknowledges the concerns of some residents who disagree with SJRM's decision to sell the Hospital to RCCH HealthCare Partners. In their comments, persons provided various alternatives to selling the Hospital to a for-profit entity, suggesting instead that SJRM (a) sell or give the Hospital to the community, (b) submit the Hospital's future to a public vote, or (c) sell the

Hospital to one of the nonprofit healthcare systems presently operating in northern Idaho. These suggestions, however, do not reflect SJRMC's current reality.

After a lengthy review process, the SJRMC Board determined its top priority for protecting the Hospital's long-term viability was to identify "new management." This led to RCCH HealthCare Partners, which made a reasonable offer to the Board. The purchase price exceeds the Hospital's fair market value and the offer includes, among other things, an investment of \$57 million in capital funds, local control of the corporation, a continuation of all employment contracts, salaries, and benefits, a continuation of a similar level of charity care and services, and adherence to the Catholic Tradition.

The Attorney General respects the positions of those who voiced opposition to the proposed sale, but believes the proposed sale is in the Hospital's and the community's best interests. Selling the Hospital to RCCH HealthCare Partners will help the Hospital meet its capital needs and make it more competitive in the local market. An improved facility with local management should improve staff morale and help attract more permanent healthcare workers to the area. And, while nothing is guaranteed, a quality hospital translates to better community health and an improved economy.

V.

CONCLUSION

The Attorney General first wishes to thank the Hospital's staff, community members and leaders, legislators, and others who provided him with opinions, questions, and information regarding the proposed sale. The public's participation in the review process helped the Attorney General better understand the concerns and needs of those whose lives will be most directly impacted by this transaction.

Additionally, the Attorney General appreciates the cooperation he received throughout his review from SJRMC, Ascension Health, and RCCH HealthCare Partners. The parties and their representatives worked closely together, considered one another's concerns, and reached fair resolutions of contentious issues.

Since 1902 when the Sisters of St. Joseph of Lewiston established the Hospital in a seven-bedroom home in Lewiston, it has grown into an outstanding institution that provides award-winning healthcare to residents in three states. The decision of the SJRMC Board to now sell the Hospital to a for-profit corporation was made only after weighty reflection, consultation, and deliberation, and the record before the Attorney General indicates the SJRMC Board's decision will best serve the interests of the Hospital and the people it serves.

The Attorney General finds the sale terms, the parties' actions surrounding the sale, and Ascension Health's contribution of \$23 million to a healthcare endowment comply with the six factors listed in Idaho Code § 45-1506. An independent, community foundation will administer the endowment and decide what organizations, programs, and projects to fund and support. An additional \$2 million in funding from RCCH HealthCare Partners will bring the endowment to \$25 million, a substantial sum that—for the foreseeable future—will help to improve the health and well-being of thousands of persons living throughout the Lewis-Clark Valley.

APPENDIX

The Idaho Nonprofit Hospital Sale or Conversion Act

Title 48, Chapter 15, Idaho Code

48-1501. LEGISLATIVE FINDINGS AND INTENT. (1) Nonprofit hospitals hold assets in charitable trust, and are dedicated to the specific charitable purposes set forth in the articles of incorporation of the nonprofit corporations or governing papers of the nonprofit entities operating such hospitals. Nonprofit hospitals have a substantial and beneficial effect on the provision of health care to the people of Idaho, providing as part of their charitable mission free or low-cost health care.

(2) The attorney general is entrusted by law to bring actions on behalf of the public in the event of a breach of the charitable trust, pursuant to section 67-1401, Idaho Code.

(3) This act shall be cited as the “Nonprofit Hospital Sale or Conversion Act.”

48-1502. DEFINITIONS. As used in this act:

(1) “Hospital” means a place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment or care for not less than twenty-four (24) hours in any week of two (2) or more nonrelated individuals suffering from illness, disease, injury, deformity, or requiring care because of old age, or a place devoted primarily to providing, for not less than twenty-four (24) hours in any week, of obstetrical or other medical or nursing care for two (2) or more nonrelated individuals.

(2) “Nonprofit hospital” means any hospital, including hospitals owned by corporations, that is organized as a nonprofit concern, however structured or created. The term also includes entities owned, governed or controlled by a nonprofit hospital. The term does not include hospitals which are operated by a governmental unit.

(3) “Nonprofit hospital conversion transaction” means:

(a) The sale, transfer, lease, exchange, optioning, or conveyance of the lesser of thirty million dollars (\$30,000,000) or forty percent (40%) of the assets of a nonprofit hospital to an entity or person other than a nonprofit entity or an entity controlled by the nonprofit hospital; or

(b) The transfer of control or governance of the lesser of thirty million dollars (\$30,000,000) or forty percent (40%) of the assets of a nonprofit hospital to an entity or person other than a nonprofit entity or an entity controlled by the nonprofit hospital.

(c) “Nonprofit hospital conversion transaction” does not include contracts, in the usual course of business, between the nonprofit hospital and another entity:

(i) For the provision of services to the nonprofit hospital;

(ii) For the sale of equipment; or

(iii) For the leasing of space.

(d) Beginning on July 1, 2001, and each July 1 thereafter, the sums of thirty million dollars (\$30,000,000) referenced in subsections (3)(a) and (3)(b) of this section, shall increase or decrease in accordance with the percentage amount change in the hospital services component of the consumer price index as published by the bureau of labor statistics of the United States department of labor.

(4) “Person” means any individual, partnership, trust, estate, corporation, association, joint venture, joint stock company, insurance company or other organization.

(5) “Charitable trust interest” shall mean those factors specifically listed in section 48-1506, Idaho Code.

48-1503. NOTICE TO THE ATTORNEY GENERAL. (1) Any nonprofit hospital shall be required to provide written notice to the attorney general prior to entering into any nonprofit hospital conversion transaction.

(2) In addition to identifying the parties to the nonprofit hospital conversion transaction and the general terms of the transaction, the notice to the attorney general provided for in this section shall include and contain relevant information related to the review factors set forth in section 48-1506, Idaho Code.

(3) This chapter shall not apply to a nonprofit hospital if the attorney general has given the nonprofit hospital a written waiver of this chapter as to the nonprofit hospital conversion transaction.

48-1504. ATTORNEY GENERAL REVIEW AND WRITTEN OPINION -- TIME PERIODS -- EXTENSION -- DISTRICT COURT REVIEW. (1) No nonprofit hospital conversion transaction may close or be consummated until the time periods, as provided in this section, have expired.

(2) Within ninety (90) days of receipt of a written notice as required by section 48-1503, Idaho Code, the attorney general shall review the proposed nonprofit hospital conversion transaction and notify the nonprofit hospital in writing of his opinion. The attorney general shall review the nonprofit hospital conversion transaction to determine if it is in the charitable trust interest. In making his determination, the attorney general shall be guided by the factors set forth in section 48-1506, Idaho Code. Upon application by the attorney general, the district court may extend this period for an additional sixty (60) day period, provided the extension is necessary to obtain necessary and relevant information pursuant to section 48-1507(2) or 48-1508(1), Idaho Code.

(3) If the attorney general, in his written opinion, opposes the proposed nonprofit hospital conversion transaction, the parties to the transaction may not close or consummate the transaction for fourteen (14) days after the attorney general's opinion has been issued to allow the attorney general, in his discretion, to file suit seeking to block the transaction.

(4) If the attorney general files a lawsuit seeking to block the nonprofit hospital conversion transaction, the district court shall review, de novo, the transaction to determine if it is in the charitable trust interest. In making this determination, the district court shall use the factors set forth in section 48-1506, Idaho Code. Neither a positive nor a negative finding with regard to one (1) or more of the factors listed in section 48-1506, Idaho Code, shall necessarily mean that the nonprofit hospital conversion transaction is or is not in the charitable trust interest.

48-1505. PUBLIC MEETINGS -- NOTICE OF TIME AND PLACE. (1) Prior to issuing any written opinion pursuant to section 48-1504, Idaho Code, the attorney general may conduct one (1) or more public meetings, one (1) of which, if held, shall be held in the county where the nonprofit hospital's assets to be transferred are located.

(2) If a party to the intended nonprofit hospital conversion transaction requests the hearing be conducted by a hearing officer outside the attorney general's office, a hearing officer, mutually agreed upon by the parties to the conversion transaction and the attorney general, shall be selected.

(3) At the public meeting, the attorney general or hearing officer shall hear comments from interested persons desiring to make statements regarding the proposed nonprofit hospital conversion transaction.

(4) The attorney general shall cause timely written notice to be provided regarding the time and place of the meeting through publication in one (1) or more newspapers of general circulation in the affected community, to the county board of supervisors, and if applicable, to the city council of the city where the nonprofit hospital's assets to be transferred are located.

(5) If a hearing officer is used, the parties to the nonprofit hospital conversion transaction shall pay the costs of the hearing officer.

48-1506. NONPROFIT HOSPITAL CONVERSION TRANSACTION REVIEW ELEMENTS. In reviewing a proposed nonprofit hospital conversion transaction, the attorney general (and the district court as necessary and applicable), shall consider:

- (1) Whether the nonprofit hospital will receive fair market value for its charitable trust assets;
- (2) Whether the fair market value of the nonprofit hospital's assets to be transferred has been affected by the actions of the parties in a manner that improperly causes the fair market value of the assets to decrease;
- (3) Whether the proceeds of the proposed nonprofit hospital conversion transaction will be used consistent with the trust under which the assets are held by the nonprofit hospital and whether the proceeds will be controlled as funds independently of the acquiring or related entities;
- (4) Whether the governing body of the nonprofit hospital exercised due diligence in deciding to dispose of the nonprofit hospital's assets, selecting the acquiring entity, and negotiating the terms and conditions of the disposition;
- (5) Whether the nonprofit hospital conversion transaction will result in improper private inurement to any person as set forth in section 48-1511, Idaho Code; and
- (6) Whether the terms of any management or services contract negotiated in conjunction with the proposed nonprofit hospital conversion transaction are reasonable.

48-1507. RULES -- AUTHORITY TO ADOPT -- INFORMATION REQUESTS -- CONSEQUENCES OF REFUSAL TO PROVIDE INFORMATION. (1) The attorney general may adopt such rules, pursuant to chapter 52, title 67, Idaho Code, as the attorney general deems appropriate or necessary to implement this chapter.

(2) The attorney general may request that the nonprofit hospital giving notice under section 48-1503, Idaho Code, in addition to providing information related to the review factors set forth in section 48-1506, Idaho Code, provide other information which the attorney general reasonably deems necessary and relevant to review the nonprofit hospital conversion transaction.

(3) If the nonprofit hospital declines to provide the information requested by the attorney general in subsection (2) of this section, the attorney general may apply to the court for an order requiring the disclosure of the information, which shall be granted if found to be necessary and relevant.

48-1508. CONTRACTS WITH AGENCIES AND CONSULTANTS -- REIMBURSEMENT FOR COSTS AND EXPENSES OF REVIEW -- FAILURE TO PAY. (1) Within the time periods designated in section 48-1504, Idaho Code, the attorney general may do any of the following to assist in the review of the proposed nonprofit hospital conversion transaction described in section 48-1503, Idaho Code:

(a) Contract with, consult, and receive advice from any agency of the state or the United States on such terms and conditions the attorney general deems appropriate; or

(b) In the attorney general's sole discretion, contract with such experts or consultants the attorney general deems appropriate to assist the attorney general in reviewing the proposed nonprofit hospital conversion transaction.

(2) Any costs incurred by the attorney general pursuant to this section shall not exceed an amount that is reasonable and necessary to conduct the review of the proposed nonprofit hospital conversion transaction. The attorney general shall be exempt from the provisions of any applicable state laws regarding public bidding procedures for purposes of entering into contracts pursuant to this section.

(3) The attorney general, after reviewing the nonprofit hospital conversion transaction, may submit a claim to the board of examiners for reimbursement of his reasonable costs and expenses

incurred in reviewing the transaction. Upon submission of a claim from the attorney general, the board of examiners may authorize the issuance of deficiency warrants for the purpose of reimbursing the attorney general reasonable and actual costs, but not attorney's fees, associated with actions taken pursuant to this chapter. Deficiency warrants authorized by the board of examiners under this section shall not exceed one hundred thousand dollars (\$100,000) for reimbursement of all claims as a result of the attorney general's review of a transaction under this chapter. Upon authorization of deficiency warrants by the board of examiners in accordance with the provisions of this section, the state controller shall, after notice to the state treasurer, draw deficiency warrants in the authorized amounts against the general account.

48-1509. PUBLIC RECORDS. All documents submitted to the attorney general by any person, including nonprofit hospital entities giving notice under section 48-1503, Idaho Code, in connection with the attorney general's review of the proposed nonprofit hospital conversion transaction pursuant to this chapter shall be deemed records contained in court files of judicial proceedings, as provided for in section 74-104(2), Idaho Code, and shall only be subject to public disclosure, pursuant to a public document request, in the same manner as set forth in that section.

48-1510. PENALTIES -- REMEDIES. (1) In his discretion, the attorney general may apply to the district court for an order voiding any nonprofit hospital conversion transaction entered into in violation of the notice and disclosure requirements of section 48-1503(1), Idaho Code. Each member of the governing boards and the chief executive officers of the parties to the nonprofit hospital conversion transaction may be subject to a civil penalty of up to ten thousand dollars (\$10,000) for knowingly failing to notify the attorney general of the nonprofit hospital conversion transaction, or for violating the provisions of section 48-1511, Idaho Code, as applicable. The amount of any civil penalty shall be determined by the district court in the county in which the nonprofit hospital's assets to be transferred are located. No such penalty may be imposed under this section merely because the attorney general files suit under section 48-1504, Idaho Code, or because the district court enters an order that the nonprofit hospital conversion transaction at issue is not in the charitable trust interest. The attorney general shall institute proceedings to impose such a penalty.

(2) Nothing in this chapter shall be construed to limit the common law authority of the attorney general regarding charitable trusts and charitable assets in this state. The provisions of this chapter are in addition to, and not a replacement for, any other actions which the attorney general may take under either the common law or statutory law, including rescinding the nonprofit hospital conversion transaction, granting injunctive relief or any combination of these and other remedies available under common law or statutory law.

48-1511. PRIVATE BENEFIT. No person who is an officer, director, board member or other fiduciary of a nonprofit hospital shall receive anything of value, beyond ordinary compensation, that relates to a nonprofit hospital conversion transaction described in this act and is of such a character as to have the appearance of an improper influence on the person with respect to the person's duties; provided however, that an officer or employee of the nonprofit hospital may accept a job with, perform duties for, and receive ordinary compensation from, the purchasing or converting entity. Any person who violates the provisions of this section shall, in addition to being subject to the provisions of section 48-1510, Idaho Code, forfeit the items of value received in violation of this section.

48-1512. APPLICATION OF ACT. This act applies to all acquisitions, the consummation of which occurs after the effective date of this act.